

1 MELINDA HAAG (CABN 132612)
2 United States Attorney
3 ALEX G. TSE (CABN 152348)
Chief, Civil Division
4 ABRAHAM A. SIMMONS (CABN 146400)
Assistant United States Attorney
5 ANN MARIE REDING (CABN 226864)
Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055
7 San Francisco, California 94102-3495
Telephone: (415) 436-7264
8 FAX: (415) 436-6748
abraham.simmons@usdoj.gov
annie.reding@usdoj.gov

9 Attorneys for United States and Brian Myrick

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 DORA BAires, INDIVIDUALLY AND ON) CASE NO. C 09-5171 CRB
15 BEHALF OF THE ESTATE OF JUAN)
16 CARLOS BAires; AND TEOFILo)
17 MIRANDA, AN INDIVIDUAL,)
18 Plaintiffs,)
19 v.)
20 THE UNITED STATES OF AMERICA;)
21 BRIAN MYRICK, an individual;)
22 THE COUNTY OF KERN; KERN COUNTY)
23 SHERIFF'S DEPARTMENT; KERN)
24 MEDICAL CENTER; LERDO DETENTION)
FACILITY; DONALD YOUNGBLOOD, an)
individual; KHOSROW MOSTOFI, M.D., an)
individual,)
Defendants.)

1 It is hereby stipulated by and between the undersigned Plaintiff TEOFILLO MIRANDA and the
2 UNITED STATES OF AMERICA by and through their respective attorneys, as follows:

3 WHEREAS, Plaintiffs filed the above-captioned action on October 30, 2009;

4 WHEREAS, Plaintiff Miranda and the United States of America (collectively, "the Parties")
5 wish to avoid any further litigation and controversy and to settle and compromise fully any and all
6 claims and issues that have been raised, or could have been raised in this action, which have transpired
7 prior to the execution of this Settlement Agreement ("Agreement");

8 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and
9 other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as
10 follows:

11 1. **Agreement to Compromise Claims.** The Parties do hereby agree to settle and compromise
12 each and every claim of any kind, whether known or unknown, arising directly or indirectly from the
13 acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in
14 this Agreement.

15 2. **Definition of "United States of America."** As used in this Agreement, the United States of
16 America shall include its current and former agents, servants, employees, and attorneys, as well as all its
17 departments and agencies including, but not limited to, the Department of Homeland Security, United
18 States Immigration and Customs Enforcement, and/or their current and former agents, servants,
19 employees, and attorneys.

20 3. **Settlement Amount.** The United States of America agrees to pay the sum of fifteen thousand
21 dollars (\$15,000.00) ("Settlement Amount"), which sum shall be in full settlement and satisfaction of
22 any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from,
23 and by reason of any and all known and unknown, foreseen and unforeseen personal injuries, damage to
24 property and the consequences thereof, resulting, and to result, from the subject matter of this
25 settlement, including any claims for wrongful death, for which Plaintiff Miranda or his guardians, heirs,
26 executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the
27 United States of America.

1 4. **Release**. Plaintiff Miranda and his guardians, heirs, executors, administrators or assigns
 2 hereby agrees to accept the Settlement Amount in full settlement and satisfaction of any and all claims,
 3 demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful
 4 death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen personal
 5 injuries, damage to property and the consequences thereof which they may have or hereafter acquire
 6 against the United States of America on account of the same subject matter that gave rise to the above-
 7 captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known
 8 or unknown, and whether for compensatory or exemplary damages. Plaintiff Miranda and his guardians,
 9 heirs, executors, administrators or assigns further agrees to reimburse, indemnify and hold harmless the
 10 United States of America from and against any and all such causes of action, claims, liens, rights, or
 11 subrogated or contribution interests incident to or resulting from further litigation or the prosecution of
 12 claims by Plaintiff Miranda or his guardians, heirs, executors, administrators or assigns against any third
 13 party or against the United States, including claims for wrongful death.

14 5. **Dismissal of Action**. In consideration of the payment of the Settlement Amount and the
 15 other terms of this Agreement, Plaintiff Miranda shall immediately upon execution of this Agreement
 16 also execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation
 17 of Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that could have been
 18 asserted in this action, against the United States. The fully executed Stipulation of Dismissal will be
 19 held by the United States' attorneys and will be filed within five (5) business days of receipt by Plaintiff
 20 Miranda's attorney of the Settlement Amount.

21 6. **No Admission of Liability**. This stipulation for compromise settlement is not intended to be,
 22 and should not be construed as, an admission of liability or fault on the part of the United States, and it
 23 is specifically denied that it is liable to the Plaintiff Miranda. This settlement is entered into by all
 24 parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further
 25 litigation.

26 7. **Parties Bear Their Own Costs**. It is also agreed, by and among the Parties, that the
 27 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by
 28 the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

1 8. **Attorney's Fees.** It is also understood by and among the Parties that pursuant to Title 28,
 2 United States Code, Section 2678, attorney's fees for services rendered in connection with this action
 3 shall not exceed 25 per centum of the amount of the compromise settlement.

4 9. **Authority.** The persons signing this Agreement warrant and represent that they possess full
 5 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

6 10. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section
 7 1542 are set forth below:

8 ”A general release does not extend to claims which the creditor does not know or suspect
 9 to exist in his or her favor at the time of executing the release, which if known by him or
 her must have materially affected his or her settlement with the debtor.”

10 Plaintiff having been apprized of the statutory language of Civil Code Section 1542 by his attorney, and
 11 fully understanding the same, nevertheless elects to waive the benefits of any and all rights he may have
 12 pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands
 13 that, if the facts concerning Plaintiff's injury and the liability of the government for damages pertaining
 14 thereto are found hereinafter to be other than or different from the facts now believed by them to be true,
 15 the Agreement shall be and remain effective notwithstanding such material difference.

16 11. **Payment by Electronic Funds Transfer.** Payment of the settlement amount shall be
 17 deposited by electronic fund transfer to the Reed Smith trust fund account Plaintiff shall designate in an
 18 Electronic Funds Transfer enrollment form the Plaintiff will provide to the undersigned Assistant United
 19 States Attorney within five days of executing this Agreement. Plaintiff's attorney agrees to distribute
 20 the settlement proceeds to the Plaintiff. Plaintiff and his attorney have been informed that payment of
 21 the Settlement Amount may take ninety (90) days or more from the date that the Court “so orders” this
 22 Agreement to process.

23 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff Miranda
 24 based on payment of the Settlement Amount, Plaintiff shall be solely responsible for paying any such
 25 determined liability from any government agency. Nothing in this Agreement constitutes an agreement
 26 by the United States of America concerning the characterization of the Settlement Amount for the
 27 purposes of the Internal Revenue Code, Title 26 of the United States Code.

1 13. **Construction.** Each party hereby stipulates that it has been represented by and has relied
2 upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the
3 contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands
4 all of the terms of the Agreement and the legal consequences thereof. For purposes of construction, this
5 Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not,
6 therefore, be construed against any Party for that reason in any subsequent dispute.

7 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable,
8 the validity, legality, and enforceability of the remaining provision shall not in any way be affected or
9 impaired thereby.

10 15. **Integration.** This instrument shall constitute the entire Agreement between the parties, and
11 it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by
12 the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement.
13 The parties further acknowledge that no warranties or representations have been made on any subject
14 other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise
15 changed in any respect except by writing, duly executed by all of the parties or their authorized

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1 representatives.

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3 DATED: February 5, 2014

s/ Teofilo Miranda
TEOFILO MIRANDA
Plaintiff

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5 DATED: February 5, 2014

s/ Steven M. Kohn
STEVEN M. KOHN
REED SMITH LLP
Plaintiff's Attorney

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7 DATED: February 7, 2014

s/ Abraham Simmons
ABRAHAM SIMMONS
Assistant United States Attorney
Attorney for Defendant

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10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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12 Dated: February 10, 2014

